

Message Text

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PAGE 01 STATE 157339

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INFO OCT-01 EUR-25 ADP-00 SCA-01 JUSE-00 FBO-01 CPR-02

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DRAFTED BY L/M/SCA - H. F. SHAMWELL, JR.

8/3/73 20768

APPROVED BY L/M/SCA - K. E. MALMBORG

JUSTICE - MR. RISTAU (PHONE)

L/M/SCA - MR. MALMBORG

EUR/IB - MR. MC COWN

FBO - MR. MORAN

L/C - MR. HUANG

L/PM - MR. FIELDS

----- 047674

R 091851Z AUG 73

FM SECSTATE WASHDC

TO AMEMBASSY MADRID

UNCLAS STATE 157339

EO 11652: NA

TAGS: PFOR, ABLD, SP

SUBJECT: USG TAX LIABILITY ON SALE OF CASA AMERICANA
PROPERTY

REF: (A) MADRID 4096; (B) STATE 025420

1. REF A REPORTED APPARENTLY FINAL DECISION OF MUNICIPAL-
ITY OF MADRID RELATING TO TAX IMPOSED ON INCREASE IN VALUE
OF CASA AMERICANA PROPERTY AND REQUESTED AUTHORITY TO
SETTLE WITH VALLEHERMOSO TO AVOID "FURTHER COURT ACTION,
HARASSMENTS, AND OTHER DISAGREEABLE SITUATIONS."

2. DEPARTMENT HAS DISCUSSED THE BACKGROUND OF THIS CASE
IN CONSIDERABLE DETAIL WITH THE JUSTICE DEPARTMENT (FOR-
EIGN LITIGATION SECTION) WHICH HAS ADVISED AGAINST PAYMENT
OF THE AMOUNT OF TAX BY USG. JUSTICE HAS FURTHER EXPRESSED
WILLINGNESS TO PREPARE ANY NECESSARY LEGAL DEFENSE IN THE
EVENT OF A SUIT AGAINST USG OR ONE OF ITS AGENCIES. COPY
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PAGE 02 STATE 157339

OF ENTIRE FILE, EXCEPT COPY OF CONTRACT BETWEEN EMBASSY

AND VALLEHERMOSO (SEE STATE 150446), HAS BEEN TRANSMITTED TO JUSTICE FOR ITS REVIEW.

3. IN VIEW OF THE ABOVE, EMBASSY IS NOT REPEAT NOT AUTHORIZED TO SETTLE WITH VALLEHERMOSO. IT IS VIEW OF BOTH DEPARTMENT AND FOREIGN LITIGATION SECTION OF JUSTICE THAT SUCH PAYMENT WOULD PREJUDICE USG'S CASE ON LEGAL ISSUE OF LIABILITY OF CASA AMERICANA PROPERTY TO TAXATION BY MUNICIPAL AUTHORITIES.

4. DEPARTMENT ENDORSES EMBASSY'S DECISION TO PRESS AHEAD WITH FURTHER DISCUSSIONS WITH MINISTRY OFFICIALS. IT IS RECOMMENDED THAT EMBASSY AGAIN RAISE POINTS CONTAINED PARA 2, REF B. IN ADDITION, EMBASSY SHOULD STRESS THAT APPLICATION OF RULES OF VIENNA CONVENTION AND CUSTOMARY INTERNATIONAL LAW ON EXEMPTIONS FROM TAXATION OF DIPLOMATIC PREMISES IS SUBJECT TO THE TEST OF RECIPROCITY. IN THIS REGARD, EMBASSY SHOULD CITE ARTICLE 47 OF THE CONVENTION , PARTICULARLY PARA 2 (A) OF THAT ARTICLE WHICH READS AS FOLLOWS: "HOWEVER, DISCRIMINATION SHALL NOT BE REGARDED AS TAKING PLACE: (A) WHERE THE RECEIVING STATE APPLIES ANY OF THE PROVISIONS OF THE PRESENT CONVENTION RESTRICTIVELY BECAUSE OF A RESTRICTIVE APPLICATION OF THAT PROVISION TO ITS MISSION IN THE SENDING STATE," FYI: THE USG WOULD BE JUSTIFIED IN WITHHOLDING THE EXTENSION OF REAL PROPERTY TAX EXEMPTIONS TO PROPERTY OF THE GOS IN THE US IF THE MUNICIPALITY PERSISTS IN MAINTAINING ITS PRESENT LEGAL POSITION. (NOTE: GOS MAY BE PLANNING TO RELOCATE EMBASSY IN WASHINGTON IN NEAR FUTURE.) END FYI

5. CONCERNING STATEMENT MADE IN MEMORANDUM FROM MUNICIPALITY OF MADRID (UNDATED) THAT NO TRUE BASIS FOR RECIPROCITY EXISTS BY VIRTUE OF FACT THAT SPANISH PROPERTIES IN WASHINGTON ARE EXEMPTED FROM TAXATION BY DISTRICT OF COLUMBIA, NOT FEDERAL GOVERNMENT, DEPARTMENT REGARDS SUCH ARGUMENT AS SPECIOUS. BASIS OF DISTRICT OF COLUMBIA STATUTE EXEMPTING REAL PROPERTY OF FOREIGN GOVERNMENTS USED FOR LEGATION PURPOSES FROM TAXATION IS OBLIGATION BINDING UPON UNITED STATES UNDER CUSTOMARY INTERNATIONAL UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STATE 157339

LAW TO ACCORD SUCH EXEMPTION. FURTHER, BY VIRTUE OF THE ENTRY INTO FORCE OF THE VIENNA CONVENTION, OBLIGATION TO EXTEND REAL PROPERTY TAX EXEMPTIONS TO DIPLOMATIC PREMISES IS BINDING ON ALL STATES, LOCALITIES AND OTHER POLITICAL SUBDIVISIONS OF THE COUNTRY. FINALLY , EXEMPTION ACCORDED FOREIGN GOVERNMENTS FROM PAYMENT OF TAX ON INCOME FROM INVESTMENTS OR OTHER SOURCES IN U.S. IS PROVISION OF FEDERAL (26 USC 892), NOT STATE OR LOCAL LAW. THUS, GOS

ARGUMENTS IN THIS REGARD HOLD NO WATER. IF EMBASSY DEEMS IT ADVISABLE, THESE ADDITIONAL POINTS MAY BE RAISED IN ANY SUBSEQUENT DISCUSSIONS WITH EITHER MUNICIPAL OR GOS AUTHORITIES.

6. EMBASSY SHOULD ALSO STRESS THAT VIENNA CONVENTION EXTENDS REAL PROPERTY TAX EXEMPTIONS TO DIPLOMATIC PROPERTY "TO ALL NATIONAL, REGIONAL OR MUNICIPAL DUES AND TAXES IN RESPECT OF THE PREMISES OF THE MISSION." FURTHER, THE

RESPONSIBILITY ASSUMED BY THE RECEIVING STATE (E.G., THE GOS) UNDER THE CONVENTION EXTENDS TO ASSURING THAT THE POLITICAL SUBDIVISIONS THEREOF COMPLY WITH ITS PROVISIONS. THUS, THE EMBASSY SHOULD CONTINUE TO REQUIRE COMPLIANCE WITH ARTICLE 23 FROM THE GOS, IN ADDITION TO ANY FURTHER EXPRESSION OF LEGAL ARGUMENTS TO THE MUNICIPALITY.

7. IF EMBASSY FEELS THAT FAILURE TO MAKE PAYMENT TO VALLERHERMOSO WILL RESULT IN INCREASED HARASSMENT OF EMBASSY STAFF, EMBASSY MAY ELECT TO INFORM VALLEHERMOSO THAT ANY FURTHER COMMUNICATIONS OR INQUIRIES MAY BE DIRECTED TO THE DEPARTMENT OF JUSTICE.

8. EMBASSY REQUESTED POUCH TO DEPARTMENT ALL RELEVANT RECORDS (E.G. MEMCONS) RELATING TO DISCUSSIONS WITH MADRID OR GOS AUTHORITIES AS WELL AS WITH VALLEHERMOSO, RELATING TO USG RESPONSIBILITY TO PAY TAX IN FIRST INSTANCE, OR AT LATER TIME. THESE MATERIALS NECESSARY FOR PURPOSE PREPARATION NECESSARY LEGAL DEFENSE. EMBASSY ALSO REQUESTED TO KEEP DEPARTMENT INFORMED OF ANY ADDITIONAL DEVELOPMENTS.

9. RE PARAS 4 THROUGH 6 ABOVE, DEPARTMENT WILL PRE-UNCLASSIFIED

UNCLASSIFIED

PAGE 04 STATE 157339

PARE DIPLOMATIC NOTE FOR TRANSMISSION TO MFA, EMBODYING THESE LEGAL ARGUMENTS. IF EMBASSY SO WISHES, IT MAY REFRAIN FROM ENGAGING DETAILED LEGAL DISCUSSIONS PENDING RECEIPT THAT DRAFT NOTE. FYI: FOR ADDED EMPHASIS USG CONCUR THIS CASE, WE PLAN SUBMIT PARALLEL NOTE TO AMB. SAGAZ. ROGERS

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